IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 7118 of 2004

Between:

K.Narasimha Reddy S/o of Siva Rami Reddy
aged 54 years, Occ:Secretary, Udayamanikyam PACS, Yerravaripalem Resident of Yerravaripalem, Chittor District

..... PETITIONER

AND

1. Udayamanikyam Primary Agricultural Cooperative Society Limited,

   Yerravaripalem, Chittoor District represented by its Chairman, Person-in-Charge Committee C/o the Manager, Chittor district Coop. Central Bank Ltd., Chinnagottigallu Branch Chinnagottigallu Mandal, Chittor District

2. The Deputy Registrar of Cooperative Societies/The Divisional

Cooperative Officer, Madanapalli, Chittoor Dist

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus., (i) directing the 1st respondent to pay the petitioner an amount of Rs. 81,536/- along with interest at the rate of 24% per annum from 25/01/1999 i.e., the date of deposit in terms of the orders passed by this Court in WP.No.12263/2000 dt. 20/02/2003 and as per the directions of the 2nd respondent vide proceedings No.

1642/98-Dm dt, 23/07/2003.

Counsel for the Petitioner: MR.NANDIGAM KRISHANA RAO

Counsel for the respondent No.1: Mr P.M.Gopal Rao

Counsel for the Respondent No.2: GP FOR COOPERATION

The Court made the following:

O R D E R :

-

-

The petitioner was appointed as Assistant Secretary in the 1st respondent's society in the year 1979. While so, pursuant to the audit objection conducted under Section 50 of the A.P. Cooperative Societies Act (for short "the Act") wherein a report was submitted to the 2nd respondent pointing out that the petitioner has misappropriated an amount of Rs.94,100/-. Basing on the said report, the second respondent fixed liability on the petitioner to pay an amount of Rs.94,100/- along with interest. The petitioner paid the said amount on 24.01.2000 and thereafter filed an application to refund the said amount. As the said amount was not refunded, the petitioner filed W.P.No.12263 of 2000. This Court while disposing of the said Writ Petition on 20.02.2003 directed the respondents to conduct an enquiry within a period of four months from the date of receipt of a copy of the said order giving reasonable opportunity to him and in the event of failure on the part of the respondents to conduct an enquiry within the stipulated time, the petitioner is entitled for the refund of the said amount of Rs.94,100/- paid by him along with 6% per annum from the date of the deposit till the date of refund. Pursuant to the said orders of this Court, the enquiry has been completed and the Divisional Cooperative Officer, Madanapalle passed an order in Rc.No.1642/97-D, dated-23.7.2003 stating that there is no basis

for fixing up the responsibility over the petitioner for remittance of the cash balance of Rs.94,100/- and accordingly the first respondent-Society is directed to refund an amount of rs.81,563/- to the petitioner and collect the same from Sri G. Venkataramaiah, Ex-Secretary of the first respondent-Society. As the said order of the Divisional Cooperative Officer, Madanapalle has not been implemented, the petitioner was constrained to file the Writ Petition to direct the first respondent for refund of the said amount.

2. Learned counsel appearing for the respondents 1 and 2 submits that the Writ Petition is not maintainable as the petitioner has alternative remedy by way of approaching the authorities under the Cooperative Societies Act and also under the payment of Wages Act. Therefore, it may not be appropriate and just to issue a direction for refund of the said amount.

3. An illegal liability has been fixed by the Cooperative Officers on the petitioner while exercising their powers under the Cooperative Societies Act and the same has been held to be illegal by them. Therefore, I am of the opinion that there is no justification on the part of the respondents in withholding the said amount, which was illegally collected from the petitioner.

4. Accordingly, the Writ Petition is allowed and the first respondent is directed to refund the amount of Rs.81,563/- as directed by the Divisional Cooperative Officer, Mandanapalle to the petitioner within four weeks from the date of receipt of copy of this order. There shall be no order as to costs.

_____

V. ESWARAIAH, J

Dated:04-11-2004.

ccm

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Fourth day of November, Two thousand and four.

ccm ASSISTANT REGISTRAR

To

1. The Person-in-Charge Committee
   C/o the Manager, Chittor district Coop. Central Bank Ltd.,
   Chinnagottigallu Branch Chinnagottigallu Mandal, Chittor Dist
2. The Divisional Cooperative Officer, The Deputy Registrar of

Cooperative Societies, Madanapalli, Chittoor Dist

3. 2 CC copies to GP for Cooperation, High Court Buildings, Hyderabad (OUT)

4. 2 CD copies.